

MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: December 21, 2005

FROM: Monroe D. Kiar

RE: Litigation Update

1. **Sunrise Water Acquisition Negotiations:** On August 27, 2003 and August 28, 2003, Mr. Stanley Cohen met individually with each Councilmember as well as Town Staff and the Town Attorney relevant to exploring the feasibility of the Town acquiring the Sunrise Water System and the Ferncrest Facility. Some time back, The Town Attorney spoke with Ken Cohen during which Mr. Cohen advised the Town Attorney that the Town Staff had finalized its report regarding the acquisition of the Western Area Utilities as well as Ferncrest Utilities in the east and that Staff had distributed its report to the Councilmembers. Mr. Cohen indicated at that time that his Staff would be meeting with the Council seeking its direction as to what action the Town Council wished to take on this matter. On August 24, 2004, the Town Attorney spoke with Mr. Ken Cohen, who indicated that Staff had not yet met with the Council and that there had been no new changes in this matter since the prior Litigation Update Report. At the Town Council Meeting of September 7, 2004, the Mayor and Council requested that this item be placed on a future agenda for discussion purposes. On October 13, 2004, in Mr. Cohen's absence, the Town Attorney spoke with Daniel Colabella of the Utilities Department requesting an update as to the status of this matter. Mr. Colabella indicated that he had provided the Administration with updated utility pricing figures for water in Broward County for single family residences so that information could be incorporated into a future presentation by the Administration to the Town Council. On November 8, 2004, the Town Attorney spoke with Mr. Cohen who indicated that his office would be meeting individually with councilmembers to see if there were additional issues or concerns and thereafter, would schedule a Workshop in January, 2005. On December 17, 2004, the Town Attorney's Office spoke again with Mr. Cohen who indicated that there had been no change regarding this matter since the last Litigation Update Report. During the week of January 24, 2005, the Town Attorney spoke with Mr. Cohen who indicated that the individual meetings with the Councilmembers had not yet been scheduled and that there had been no change regarding this matter since the last Litigation Report. At the Town Council Meeting of February 2, 2005, Mr. Cohen, in response to an inquiry from the Mayor, indicated he would

be scheduling individual meetings shortly. On March 4, 2005 the Town Attorney spoke with Mr. Cohen who indicated that his office would be meeting with Town Staff in about a week's time to discuss this matter and to determine with which process to proceed, namely either meet with the individual councilmembers or directly have a workshop on this issue. On April 7, 2005, the Town Attorney spoke with Mr. Cohen and was advised by Mr. Cohen that he anticipated meeting with members of the Staff regarding this issue in the very near future and thereafter, would schedule the individual meetings with the Councilmembers. At the Town Council Meeting of April 20, 2005, the Council inquired of Mr. Cohen as to the status of the proposed meeting with members of the Staff and requested that Staff arrange those meetings in the near future. Administration indicated that they would do so. At the Town Council Meeting of May 4, 2005, Mr. Cohen advised the Council that a Workshop had been scheduled for May, 2005, but would need to be rescheduled due to some scheduling conflicts. On May 17, 2005, the Town Attorney met with Mr. Cohen, Mr. Kovanes and Mr. Colabella with regard to this issue. Subsequent thereto, a Workshop was originally scheduled for the Town Council in June, 2005, but due to circumstances, was canceled. During a telephone conversation with Mr. Cohen on July 19, 2005, he indicated that Staff would be rescheduling the Workshop to a later date. On September 21, 2005, the Town Attorney spoke with Mr. Cohen who indicated that the Town Clerk would be scheduling a Workshop Meeting. Subsequent to that date, Hurricane Wilma hit the Town of Davie and some issues related to this matter were touched upon at various emergency meetings. A Workshop Meeting had been scheduled for November, but again, due to the hurricane emergency situation, it was canceled. On December 20, 2005, the Town Attorney spoke with the Town Clerk's Office who had indicated that as of that date, the Workshop Meeting had not yet been rescheduled.

2. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. In response, the Plaintiffs filed an Amended Complaint naming the Town of Davie only as a defendant. Officer Taylor was no longer named a party to these proceedings. The Town thereafter, filed a Motion to Dismiss the Amended Complaint, but after hearing the Motion to Dismiss, it was denied and the Plaintiff was given leave to file a new Amended Complaint in these proceedings. As previously reported, the Plaintiff filed an Amended Complaint and our special legal counsel, Mr. McDuff, prepared and filed an appropriate answer with the Court. On May 12, 2004, the Town Attorney spoke with Mr. McDuff who advised the Town Attorney that the Plaintiff had filed a Notice requesting the Court to set this matter for trial. On February 2, 2005, the Town Attorney spoke with Mr. McDuff's legal assistant in his absence, who indicated the status of this case remained the same and no trial date had yet been set. She indicated that Mr. McDuff had filed a Notice to set the matter for trial with the Court. Recently, the Town Attorney's Office received an Order of Court scheduling the trial in this case for the 3 week trial period beginning on October 10, 2005. On July 14, 2005, the Town Attorney's Office received a copy of a Notice of Mediation from Mr. McDuff's Office. The mediation was scheduled for August 30, 2005. Mr. McDuff advises that the mediation was held on that date, but the lawsuit remains pending. On September 22, 2005, the Town Attorney spoke with Mr. McDuff who indicated that his office has filed a Motion for Summary Judgment. The case was originally set to go to trial in October, 2005. On October 20, 2005, the Town Attorney

spoke with Mr. McDuff's legal assistant, who indicated that the case had been rolled over on the trial docket and no new date for trial has yet been set. She advised however, that the hearing on the Motion for Summary Judgment is set for November 30, 2005. On November 3, 2005, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that there had been no change in the status of this litigation since the last Litigation Update Report. On December 8, 2005, the Town Attorney spoke with Mr. McDuff who indicated that oral argument on the Town's Motion for Summary Judgment had been heard as scheduled and his office was awaiting a ruling from the Court. He also indicated that a trial in this matter is now scheduled for May, 2006. On December 20, 2005, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that there had been no change since the last Litigation Update Report.

3. **Spur Road Property:** As indicated by Mr. Willi to the Town Council at its meeting of January 2, 2003, Mr. Burke advised Mr. Willi that the 4th District Court of Appeal had affirmed the decision of the Florida Department of Transportation to accept the bid of Kevin Carmichael, Trustee, for the sale and purchase of the property which forms the subject matter of the State Road 84 Spur property litigation. At the Town Council Meeting of February 5, 2003, Mr. Willi requested that the Town Council grant him authority to take whatever legal action was necessary to obtain the property in question. That authority was given to him by the Town Council. At the Town Council Meeting of November 5, 2003, the Town Council authorized Mr. Willi to retain the law firm of Becker & Poliakoff to institute an eminent domain proceeding relevant to this property. A Special Executive Session with the attorneys for Becker & Poliakoff and the Town Council was conducted on December 17, 2003. Thereafter, the Town Attorney spoke with Mr. Daniel Rosenbaum, our special legal counsel, who indicated that the attorneys in his office were finalizing with the retained professionals, the issues that have been addressed. On February 26, 2004, the Town Attorney spoke with Mr. Rosenbaum's colleague, who advised the Town Attorney that the survey the appraiser was relying upon for determining value that the Town needs to make for a determination of its good faith offer to the potential condemnee, if the Town decides to exercise its power of eminent domain, did not reflect all of the encumbrances upon the subject site. Thereafter, all of the documents pertaining to encumbrances, reservations, easements, etc., upon the site given to the attorneys by Attorneys' Title Insurance Company were forwarded to the surveyor to make sure the documents were properly reflected in the survey so the appraiser could properly appraise the property. On April 15, 2004, the Town Attorney spoke with Mr. Daniel Rosenbaum and as indicated above, Mr. Rosenbaum stated that there were two outstanding issues which were with the outside vendors that needed to be resolved before definitive action by the Town Council could be taken. One issue involved the need for additional information on a survey commenced by the Town, which had necessitated a several week delay. The surveyors indicated to Mr. Rosenbaum that they needed additional documentation and this was forwarded to them by his office. The other issue involved a meeting which was scheduled by Mr. Rosenbaum and his staff with the Town's Land Planner to conclude the available uses of the subject site. Mr. Rosenbaum indicated that after these two issues have been dealt with, he anticipated that his firm would be proceeding in such manner as to move this matter forward aggressively. On April 28, 2004, the Town Attorney spoke with Mr. Jeff Rembaum, Mr. Rosenbaum's colleague. Mr. Rembaum indicated that his

office was still waiting on the Town's outside land use expert to opine as to the available use of the site. Additionally, he indicated they were awaiting the revised survey that the appraiser could rely upon in determining the value. On May 13, 2004, the Town Attorney spoke with Mr. Rosenbaum, who indicated that his office had made significant progress on the technical issues and that all experts were on track with regard to the proposed time table for initiating the legal action. On May 26, 2004, the Town Attorney spoke with a representative for Mr. Rembaum's office, who indicated that according to her belief, the status of this matter remained the same. This was later reconfirmed by Mr. Rosenbaum personally in a telephone conversation with the Town Attorney on May 27, 2004. On June 10, 2004, the Town Attorney spoke with Mr. Rosenbaum, who indicated that the incompleteness contained in the initial survey had been addressed and his current surveyor was completing the survey so that it may then be transmitted in a workable form to the appraiser. He indicated once the appraisal had been obtained, his firm would be able to commence litigation. On June 29, 2004, the Town Attorney spoke with Attorney Jeff Rembaum, who advised that his office expected to receive the final report from the Town's land use expert within the next few days and once received, his appraiser could then finish his report. On July 26, 2004, the Town Attorney spoke with Mr. Rembaum, who indicated that his office had received the report from the land use expert as to the available uses which the appraiser needed in order to prepare its appraisal. Mr. Rembaum indicated on August 11, 2004, that Staff had recently redefined the area of potential taking to be in conformity with the Town's existing roadways. He indicated that this would require additional surveying work by his surveyor, and that his evaluation experts were currently working on their appraisal of the subject property. On August 24, 2004, the Town Attorney spoke with Attorney Jeff Rembaum as to the current status of the proposed eminent domain proceeding. Mr. Rembaum indicated once again that due to the fact that Staff had redefined the area of potential taking, that his surveyors were conducting additional surveying work which he expected to be completed shortly and this would allow his evaluation experts to complete their appraisal of the subject property. He again, indicated that it was his hope to be before the Town Council shortly with a presentation. On September 8, 2004, the Town Attorney spoke with Mr. Daniel Rosenbaum who advised the Town Attorney that the revised sketches for the proposed taking complete with drainage and related areas, was prepared on August 30, 2004, and the sketches were being reviewed by the Town Staff and experts for final consideration. On October 27, 2004, the Town Attorney spoke with special legal counsel, Daniel Rosenbaum, who advised the Town Attorney that they anticipated making a presentation regarding this potential eminent domain proceeding in December, 2004. Subsequent to that telephone conversation, the Town Attorney spoke with Interim Town Administrator, Chris Kovanes, on November 22, 2004, who indicated that our special legal counsel had decided to meet individually with the Town Councilmembers. On December 8, 2004, the Town Attorney spoke with Mr. Jeff Rembaum, one of our special legal counsels, who advised that his firm was ready to proceed with the litigation, but would be seeking direction as to how to proceed from the members of the Town Council. He indicated at that time that he would like to meet individually with each Councilmember and thereafter, would request that this item be placed on the Agenda for a Town Council Meeting so that his firm could receive official direction from the Town as to how to proceed. On January 20, 2005, the Town Attorney again spoke with Mr. Jeff Rembaum who indicated that he was waiting for the Town to get the URS access study updated to reflect the changes due to OTTED and other factors, and that his firm needed this update before Council would be in a position to

make an informed decision. On March 4, 2005, the Town Attorney spoke with Mr. Jeff Rembaum who indicated that Ms. Margaret Wu has been assigned this matter as liaison for the Town with his office. He anticipated that this matter would be brought before the Town Council at one of its meetings in April, 2005. At the Town Council Meeting of April 20, 2005, Mr. Cohen advised the Town Council that he and Margaret Wu and other Staff members would be meeting with Mr. Jeff Rembaum regarding this matter the following day, April 21, 2005, to discuss the status of this proposed litigation. On May 6, 2005, the Town Attorney spoke with Margaret Wu, who indicated that a number of issues need to be addressed prior to the institution of any lawsuit and that the Administration would be reviewing these with the individual Town Councilmembers. On August 3, 2005, the Town Attorney again spoke with Margaret Wu, who reiterated that there were still outstanding issues to be resolved before a decision could be reached by the Council regarding the initiation of a lawsuit. On September 8, 2005, the Town Attorney's Office spoke with Mr. Rosenbaum, who advised that there has been no change since the last Litigation Update Report. On September 23, 2005, Assistant Town Attorney Parke was advised by Mr. Kovanes that he knew of no changes regarding this matter. On November 4, 2005, Margaret Wu advised the Town Attorney's office that there had been no changes relevant to this matter since the last Litigation Update Report. Subsequent thereto, the Town Attorney again spoke with Margaret Wu who indicated that there had been no changes since the Town Attorney's Report of November 22, 2005.

4. **DePaola v. Town of Davie:** Plaintiff DePaola filed a lawsuit against the Town of Davie and the Town filed a Motion to Dismiss. The Motion to Dismiss was heard by Judge Burnstein who requested that both sides file Memoranda of Law in support of their positions and she took the case under advisement. Both sides did file their Memoranda of Law in support of their positions on the Town's Motion to Dismiss, and on November 13, 2002, the Court entered an Order granting the Town's Motion to Dismiss and entered an Order of Dismissal. The Court found that Mr. DePaola had administrative remedies as a career service employee, either by pursuing a civil service appeal or by a grievance procedure established under a collective bargaining agreement, but he had failed to pursue his administrative remedies. A copy the Court's Order of November 13, 2002, has been previously provided to the Town Council for its review. The Plaintiff DePaola filed a motion with the Court for re-hearing of the Town's Motion to Dismiss, which motion was denied by the Trial Court. The attorneys for DePaola filed a Notice of Appeal of the Trial Court's decision to the 4th District Court of Appeal where the matter is now pending, but failed to file their Appellate Brief within the time set by the Rules of Appellate Procedure. As indicated in prior Town Attorney Litigation Update Reports, the Town's Motion to Dismiss was filed with the 4th District Court of Appeal due to the Plaintiff's failure to file in a timely manner, its Appellate Brief, but the Motion was denied and the 4th District Court of Appeal extended the time in which the Plaintiff could file his Brief. The Plaintiff thereafter, did file his Brief and Mr. Burke's office in turn, prepared and filed its Answer Brief on December 9, 2003. Thereafter, the Appellant, Mr. DePaola, filed his Reply Brief with the 4th District Court of Appeal of Florida, and a copy has been furnished to the Town Administrator, Mayor and Councilmembers for their information. Oral argument was conducted and presented to the 4th District Court of Appeal by both sides on February 10, 2004. On April 28, 2004, the Town Attorney received a copy of the 4th

District Court of Appeal's decision from Michael T. Burke, special legal counsel. The 4th District Court of Appeal reversed the lower court's Final Judgment dismissing Mr. DePaola's Complaint finding that his Complaint stated a cause of action and remanded the case to the trial court for proceedings consistent with the Court of Appeal's opinion. On May 26, 2004, the Town Attorney spoke with Mr. Burke's legal assistant who indicated that Mr. Burke's office would be filing an answer and would be ultimately scheduling the Plaintiff for deposition and would be conducting discovery in the near future. On May 27, 2004, Mr. Burke telephoned the Town Attorney to tell him that the Court would be permitting the Plaintiff to file an Amended Complaint. During the week of June 7, 2004, the Town Attorney spoke with Mr. Burke who indicated that the Plaintiff had filed an Amended Complaint and his office was preparing an appropriate response. He indicated that discovery in this matter would commence shortly. On June 25, 2004, the Town of Davie filed its Answer and Defenses to the Plaintiff's Amended Complaint. On September 8, 2004, the Town Attorney spoke with Mr. Burke who indicated that his office was continuing to conduct discovery in this matter. On September 28, 2004, the Town Attorney spoke with Mr. Burke who indicated that his office had received the Plaintiff's Answers to the Interrogatories served upon the Plaintiff as well as the documents his office had requested to be produced by the Plaintiff. On November 8, 2004, the Town Attorney spoke with Mr. Burke's legal assistant, who advised that this matter was in the discovery phase and his office was currently setting depositions. During the week of January 24, 2005, the Town Attorney spoke with Mr. Burke, who indicated that the Plaintiff's deposition had been taken and that discovery was ongoing. On February 14, 2005, the Town Attorney spoke with Mr. Burke, who indicated that former Town Administrators Middaugh and Willi, along with former Vice Mayor Weiner, had been deposed. On March 3, 2005, the Town Attorney spoke with Mr. Burke who indicated both sides are continuing to conduct discovery and the matter has not yet been set for trial. Mr. Burke's office recently received a settlement proposal from the Plaintiff's attorney. Mr. Burke indicated on March 24, 2005, that he would be reviewing the settlement proposal and presenting it early the following week to the Florida Municipal Investment Trust, Risk Management and ultimately, to the Town Council at an Executive Session. On July 7, 2005, pursuant to Mr. Burke's request, the Town Attorney, with the Town Council's approval, scheduled an Executive Session on this matter for August 3, 2005, at 6:30 P.M. On August 3, 2005, as scheduled, an Executive Session on this matter was held and Mr. Burke was given direction as to how to proceed. On October 20, 2005, the Town Attorney's Office spoke with Mr. Burke, who advised that the status of this litigation remained unchanged and that the Plaintiff's attorney was reviewing and revising its settlement proposal. On November 22, 2005, the Town Attorney spoke with Mr. Burke, who indicated that there had been no change in the status of this litigation since the last Litigation Update Report which he attributed to Hurricane Wilma. During a conversation with Mr. Burke regarding this matter on December 20, 2005, he reiterated the fact that there had been no change in the status of this litigation.

5. **City of Cooper City v. Town of Davie:** The City of Cooper City has filed a lawsuit for Declaratory Judgment and Injunctive Relief and Alternative Petitions for Writ of Quo Warranto and Certiorari alleging that a recent ordinance and a recent resolution relevant to annexation are invalid. The Town Attorney's Office prepared an appropriate Motion to Dismiss and filed same as the Town's insurance carrier has refused to provide a legal defense

to this action. As the Town Council has previously been advised, this office filed its Motion to Dismiss citing Cooper City's failure to comply with pertinent provisions of the Florida Statutes. Included within those enumerated provisions cited by the Town Attorney's Office, was Cooper City's failure to adhere to the "Intergovernmental Conflict Dispute Resolution" provisions of the Florida Statutes set forth in Chapter 164. Oral argument on the Town's Motion to Dismiss was heard on March 26, 2003 at which time the Judge indicated that this was the first time a matter such as this has come before him in 19 years on the bench and accordingly, he advised both sides that he would take this matter under advisement and get back to the attorneys shortly with his decision. The Judge thereafter, ordered that Cooper City's lawsuit was to be abated until Cooper City had initiated and exhausted the provisions set forth in Chapter 164. The Town and Cooper City engaged in the conflict resolution proceedings and attempted to resolve the matter without resorting to further legal remedies. As indicated in previous Litigation Reports, the Town Attorney's Office is confident in an ultimate successful outcome of this litigation and it is the Town Attorney's position that the Judge's abatement of Cooper City's lawsuit is further proof of the Town's contention that Cooper City had prematurely and inaccurately filed the present lawsuit. The initial meeting required under the "Intergovernmental Conflict Resolution" provisions of Florida Statutes Chapter 164 was held on April 17, 2003. The meeting was attended by the Town Administrator, Mr. Willi, the City Manager of Cooper City, Mr. Farrell, along with their attorneys. The meeting had been advertised and was open to the public. As a resolution to the conflict was not reached, accordingly, pursuant to Section 164.1055, a joint meeting of the municipalities was held in order to resolve the conflict. The Town Council met in good faith, with the Cooper City Commission on September 30, 2003. Thereafter, representatives from the City of Cooper City and from the Town of Davie attended a mediation on November 13, 2003, at 1:00 P.M. before Mediator Arthur Parkhurst. A resolution of the parties' differences was not reached at mediation and accordingly, the Intergovernmental Conflict procedures failed to resolve this matter. As the Intergovernmental Conflict Resolution procedures were concluded, the Town Attorney's Office again set down its Motion to dismiss the lawsuit and for an award of attorney's fees and oral argument consisting of more than an hour was conducted on February 18, 2004, before the Court. The Town Attorney's Office was pleased with the oral argument presented by his office and is confident in the outcome. The Judge took the matter under advisement and requested that the oral argument of the legal counsels be transcribed so that he could review the oral argument along with the various cases given to him by the Town Attorney and those that will be submitted by Cooper City in support of their respective positions. The oral argument presented by the Town Attorney as well as that of opposing counsel has since been transcribed pursuant to the Judge's Order and a copy of same has been provided to the Administrator and members of the Town Council for their information. A copy of the transcribed oral argument was provided by the Town Attorney's Office to the Court. On April 2, 2004, the Court ruled on the Town's Motion to dismiss the 6 count Complaint filed by the City of Cooper City against the Town to invalidate Town of Davie Ordinance 2002-37 and Resolution R-2002-259. Cooper City had filed its Complaint against the Town requesting declaratory judgment and supplemental relief, petitions for a Writ of Quo Warranto and Certiorari. Upon review of the oral arguments brought by the Town Attorney's Office in opposition to those petitions for relief, the Court dismissed 5 of the 6 counts filed by Cooper City in its Complaint against the Town. The Town Attorney had successfully argued that each of the Plaintiff's counts for injunctive and declaratory relief were

invalid as well as the Plaintiff's Petition for Certiorari and the sole remaining count allowed by the Court was for a Writ of Quo Warranto. The Town Attorney's Office will endeavor to have the final available count dismissed and will continue to keep the Town Council apprised of the status of this case. Shortly after the Town Attorney's Office filed its Answer to the remaining count with the Court, it began the discovery phase of this litigation. The Town Attorney's Office prepared and served upon Cooper City a Request for Production of Documents for the Town Attorney's review. Two large boxes of documents were received by the Town Attorney's Office in response to its Request for Production of Documents. Interrogatories propounded on the Plaintiff, Cooper City, were also prepared and served upon Cooper City and Cooper City's response has now been received and reviewed. Cooper City in turn, filed a Request for Production of Documents from the Town of Davie which was forwarded to the Town Administrator's Office for review. Those documents which are discoverable under the Rules of Civil Procedure have been produced by the various Staff members and on September 28, 2004, forwarded to the attorney for Cooper City. Cooper City also filed a series of Interrogatories addressed to the Town and these were also answered by the Town and the Town's response served upon Cooper City on September 28, 2004. It should be noted that the Town Staff worked diligently to gather together the production requested by Cooper City and worked closely with the Town Attorney's Office in order to respond to the Interrogatories served upon the Town. Both sides indicated their intent to schedule depositions of various Staff members employed by the City of Cooper City and the Town of Davie and the first deposition was taken on November 10, 2004. That was the deposition of Mr. Les Spencer of the Broward County Engineering Division. In the meantime, the Town Attorney's Office filed a Motion seeking a better response from the Plaintiff relevant to the Town's Request for Production of Documents, and served a public records request upon the City of Cooper City. The Town Attorney's Office filed a public records request seeking additional documents as it believed these should have been provided by Cooper City in response to the Town's Request for Production of Documents, but were not so provided. As indicated in prior Litigation Update Reports, a large package of documents from the City of Cooper was received in response to our public records request and these included documents which had not been previously provided pursuant to our Request for Production of Documents. These have been reviewed by the Town Attorney's Office. As indicated in a prior Litigation Update Report, the Town received a response from Cooper City relevant to the Town's Motion and accordingly, the Town Attorney's office prepared and filed an appropriate answer to Cooper City's pleading. Since filing our Answer to Cooper City's last pleading, we received another response from the Cooper City Attorney along with additional documents which we had previously requested and have been reviewed. Recently, the Town Attorney's Office wrote to the attorney for Plaintiff, City of Cooper City, requesting that it voluntarily dismiss its claims against the Town of Davie with prejudice, as the Florida Legislature had enacted House Bill 1477 during its 2005 Session, thus rendering moot the subject litigation. The City of Cooper City has responded with a proposed Settlement Agreement and Notice of Voluntary Dismissal with Prejudice, a copy of which has been forwarded to the Council for its review. At the July 6, 2005, Town Council Meeting, the Town Attorney scheduled, with the approval of the Town Council, an Executive Session for July 20, 2005, at 6:30 P.M. At the Executive Session of July 20, 2005, the Town Attorney received direction from the Town Council relevant to this matter. On August 3, 2005, a Settlement Agreement dismissing the lawsuit initiated by Cooper City against the Town of

Davie was approved by the Town Council at its regular Council Meeting of that date. The approved Settlement Agreement and Notice of Voluntary Dismissal with Prejudice executed by the Mayor along with a copy of Resolution R-2005-220 have been forwarded to the Attorney for the City of Cooper City for the city's execution and for filing with the Court. Recently, the Town Attorney's Office received a call from the attorney for Cooper City advising that their Resolution to approve the Settlement Agreement and Notice of Voluntary Dismissal with Prejudice had been tabled pending Resolution of certain concerns. The Town Attorney received a letter setting forth those concerns and appropriately responded. On November 1, 2005, the Town Attorney's Office received a letter from Attorney Silvia Alderman, the attorney for Cooper City, who indicated that the Settlement Agreement would go forward before the City Commission for a vote. On November 10, 2005, the Town Attorney's Office received a letter from Silvia Alderman indicating that she believed the Cooper City Commission would act promptly on the Settlement Agreement. Thereafter, the City of Cooper City did in fact ratify the Agreement and on November 17, 2005, the fully executed Settlement and Voluntary Dismissal with Prejudice and a proposed Order was submitted to the Judge by the City of Cooper City's Attorney. On December 19, 2005, the Town Attorney's Office received a copy of Judge Goldstein's Order of Voluntary Dismissal with Prejudice and a copy of same was transmitted on that date to the Mayor and Councilmembers and the Acting Town Administrator for their information. Accordingly, as this case has now been dismissed with prejudice, the Town Attorney's Office will be closing its file on this litigation.

6. **SESSA, ET AL V. TOWN OF DAVIE (TOWN OF DAVIE V. MALT):** As indicated in previous reports, the Town Attorney's Office successfully recovered various sums from a number of property owners relevant to the special road assessment as a result of filing several lawsuits to enforce the road assessment liens recorded against their properties. The various settlement proposals have been outlined in previous Town Attorney's Litigation Update Reports, and have each been brought before the Town Council for its consideration and ultimate approval. As each property owner has transmitted the funds to the Town, the Town Attorney's Office has filed appropriate pleadings releasing the Lis Pendens and dismissing the cases filed against these Defendants. The Town Attorney's Office continues in its efforts to recover the money owed the Town from the special road assessments. The Town Attorney's Office had filed a lawsuit against property owner, Robert Malt, to foreclose its lien on Mr. Malt's property. The Defendant filed a Motion to Dismiss, but the Court at a hearing on August 10, 2004, denied the Motion to Dismiss and ordered the Defendant to file an answer to the Complaint filed by the Town Attorneys' Office. The Town Attorney's Office received Mr. Malt's Answer and Affirmative Defenses to the Town's Complaint and Counterclaim and the Town Attorney's Office filed a Motion to Strike the Defendant's Affirmative Defenses, a Motion to Dismiss the Defendant's Counterclaim and a Motion for Judgment on the Pleadings. At the Town Council's Meeting of October 6, 2004, the Town Council was advised that a mediation had been scheduled for October 14, 2004, and the Town Council gave the Town Attorney authority to enter into meaningful settlement negotiations with the Defendant subject to the ultimate review and approval by the Town Council. No settlement was reached at the mediation session and the parties reached an impasse. Accordingly, the hearing on the Town's Motion to Strike the Defendant's Affirmative Defenses, Motion to Dismiss the Defendant's Counterclaim, and a Motion for Judgment on the Pleadings was

heard by the Court on October 19, 2004. After oral argument by both sides, the Court granted the Town's Motion to Strike the Defendant's Affirmative Defenses, granted the Town's Motion to Dismiss his Counterclaim and granted the Town's Motion for Judgment on the Pleadings. A proposed Order was submitted by the Town Attorney's Office to the Court for its review and was signed by the Court on November 1, 2004. A copy of the Order signed by Judge Fleet has been forwarded to the Town Council for its review. Thereafter, the Defendant filed a Motion for Rehearing relevant to the Court's decision and the Town Attorney's Office filed a response in opposition to the Defendant's Motion for Rehearing. The Court ultimately denied the Defendant's Motion for Rehearing. Recently, the Town Attorney's Office discovered another lien holder and the Court has granted the Town's Motion to add that lien holder as an additional defendant in this foreclosure litigation. The Town Attorney's Office has served this additional defendant and has brought it into this action as a party to the special assessment foreclosure action. The Town Attorney's Office filed a Motion for Final Judgment in this matter and a hearing was held on October 11, 2005, at which time a Final Judgment of Foreclosure was entered by the Court in favor of the Town of Davie. A foreclosure sale of the property was scheduled for November 10, 2005, but on November 9, 2005, the defendant tendered a cashier's check in the sum of \$96,764.82, which sum was immediately transmitted to the Acting Town Administrator, Mr. Cohen. The defendant, Mr. Malt filed an Appeal of Judge Fleet's Order granting the Town a Final Judgment of Foreclosure, with the 4th District Court of Appeal. Said appeal is now pending. The Town Attorney's Office is currently awaiting the Defendant's Appellate Brief. In the meantime, the Town Attorney has filed a Motion with the 4th District Court of Appeal seeking an Order awarding the Town its legal fees that it may incur as a result of the Defendant filing his appeal of the Trial Court's Order with the Appellate Court.

7. **TOWN OF DAVIE V. LAMAR ELECTRONICS, INC.:** The Town successfully prosecuted Lamar Electronics, Inc. for several violations of the Town Code before the Special Master. Lamar Electronics has filed an Appeal with the Circuit Court of Broward County. Lamar Electronics filed its Initial Brief and in response, the Town Attorney's Office on behalf of the Town, has filed an Answer Brief. Lamar Electronics in response, filed a Reply Brief. The Town filed a Motion to Strike the Reply Brief of the property owner and after hearing, the Court allowed the Reply Brief to stand, but however, with the caveat that Lamar Electronics will not be able to utilize their argument with regard to the Right to Farm Act. The Court now has before it the various Briefs filed by the parties and the Town Attorney's Office is awaiting the Court's ruling with regard to the Defendant's appeal. As of the date of this Litigation Update Report, December 8, 2004, there has not yet been a ruling by the Court. In the meantime, the Court entered an Order Setting Case Management and requiring the parties to appear before the Court in this matter on November 5, 2004, at which time the Town Attorney's Office appeared and advised the Court of the status of this matter. The Judge ordered that there be oral argument in this case for January 27, 2005, before it would enter a decision in this matter. On January 27, 2005, Attorney Martin Kiar successfully argued the Town's position at Oral Argument before the Court. At the conclusion of the Oral Argument by the attorneys for the parties, the Court ruled in favor of the Town and upheld the ruling of the Special Master which included a provision that the waste previously deposited on the Respondent's property be removed. A copy of the transcript was ordered and received

by the Town Attorney's Office and a proposed Order submitted to the Judge for his signature on February 2, 2005. The Town Attorney's Office has now received Judge Carney's Order upholding the ruling of the Special Master. As a result, the Town Attorney's Office along with the Code Compliance Division for the Town of Davie and the Town Engineer's Office and other Davie personnel are meeting with Lamar Electronics and its attorneys to determine the appropriate method for removal of the solid waste from the subject properties. In the interim, a Non-Compliance Hearing is being scheduled before the Special Magistrate. On April 6, 2005, a settlement proposal was received from the property owner by the Town Attorney's Office. This settlement proposal has been reviewed by the Town Attorney's Office and has been forwarded to the Council for its review. Since then, the Town Attorney's Office has met with representatives for the defendant and a prospective buyer of the subject property, and has been involved in further negotiations regarding a possible settlement of this litigation. A Special Executive Session was held on May 4, 2005. Since the Special Executive Session held on May 4, 2005, a new settlement proposal was received from the Respondent's legal counsel and this was distributed among the Town Councilmembers as well as the Town Administrator. An Executive Session was held on June 1, 2005, and the Town Attorney's Office was given direction. In accordance with that direction, the Town Attorney wrote to the attorney for the property owner. Thereafter, the property owner through its attorney, rejected the Town's counter-proposal. Further, the Town Council was previously advised that a prospective purchaser had withdrawn from its option to purchase the subject property. Accordingly, the Town Attorney's Office moved forward with its non-compliance hearing which was heard on June 22, 2005, and June 28, 2005, during which Assistant Town Attorney, Martin Kiar, successfully prosecuted the Defendant and one other property owner at the non-compliance hearings before the Special Magistrate. After evidence was presented and testimony taken, the Special Magistrate determined that Lamar Electronics and a new property owner had not complied with the Special Magistrate's Order. Mr. Kiar argued that there were 3 separate cases in this matter and that the Town was entitled to fines from the date the Special Magistrate's Final Orders expired until the date of June 28, 2005. The Special Magistrate found that the Town was in fact entitled to fines in the 3 separate cases. An oral order to this effect was announced in open court and thereafter, the Special Magistrate issued her 3 written Orders confirming same. Upon receipt of the 3 Orders, the Town Attorney's Office promptly proceeded to record the Orders in the Public Records of Broward County. Lamar Electronics, Inc. has filed 3 Notices of Appeal in the Circuit Court appealing the Special Magistrate's Final Orders. Lamar Electronics filed a Motion to Transfer and Consolidate its 3 new Notices of Appeal. The Town Attorney's Office prepared its Reply to Appellant's Motion to Transfer and Consolidate and filed its Reply with the Court. A hearing on Lamar's Motion to Consolidate was heard on September 29, 2005, and the Court granted that Motion. The Appellant was required to file its Initial Brief in November, but the Court granted it an extension until January, 2006, and accordingly, the Town Attorney's Office is awaiting receipt of the Defendant's Initial Appellate Brief. There has been no change in the status of this litigation since the last Litigation Update Report.

8. **PARK CITY MANAGEMENT CORP. AND PARK CITY ESTATES HOMEOWNERS ASSOCIATION V. TOWN OF DAVIE:** The Town has been served with a Complaint for Declaratory Relief relevant to the issue of the maintenance of the 18th Street median strip within the Park City Mobile Home Park. The Town Attorney's Office

prepared a Motion to Dismiss and at the hearing, the Court held that the Complaint was brought in a procedurally correct manner and the Court will be hearing the merits of the case.

In the meantime, members of the Homeowners Association have expressed their desire to withdraw as a party plaintiff in this litigation. The Plaintiff's attorney in turn, filed a Motion to Amend its Complaint to drop the Homeowners Association as a Plaintiff and to name it along with the Town of Davie as a Defendant. The Judge allowed the Plaintiff to file its Amended Complaint which names Park City Homeowners' Association as a defendant in the lawsuit. It should be noted that the jurisdictional limitations on Count II for Specific Performance of an alleged oral contract allegedly entered into between the Town of Davie and Park City Management is capped for jurisdictional purposes at the total amount of \$15,000.00 since the County Court does not have jurisdiction beyond that amount. Opposing counsel stipulated to that fact. The Town Attorney's Office prepared an Answer which it filed in response to the Complaint and has begun conducting discovery. The Town Attorney's Office recently sent out its First Request for Admissions demanding that the Plaintiff admit the correctness of the allegations set forth within that pleading. A series of Interrogatories and Request for Production of Documents was also served upon the Plaintiff by the Town Attorney's Office. A response to the Request for Admissions and Answers to the Interrogatories have been received. In the meantime, Co-Defendant, Park City Estates Homeowners Association has hired an attorney to represent its interest and filed a Motion to Dismiss the Complaint as to that Defendant. Recently, a hearing was held on the Homeowners' Motion to Dismiss which after oral argument, the Court denied. The Town Attorney's Office has recently initiated scheduling depositions in this case. The first deposition of management personnel, namely Mrs. Neal, was conducted recently by the Town Attorney's Office. Thereafter, several other depositions were conducted by this office on March 2, 2005. These depositions consisted of potential witnesses for the Town and for all other parties in this lawsuit. Further, other depositions will be scheduled by the Town Attorney's Office of potential witnesses. One such deposition was conducted on March 7, 2005. The discovery phase of this litigation continues.

At a recent Town Council Meeting, in response to an inquiry from a citizen as to whether any individuals had been personally named as defendants in this litigation, the Town Attorney's Office responded advising that no individuals had been personally named as defendants in this litigation and a Memorandum was forwarded to the Town Councilmembers confirming this fact. The Town Attorney's Office has conducted further discovery in this case and further discovery will be ongoing. Since the Litigation Update Report however, due to Hurricane Wilma, there has been no change in the status of this matter. The Town Attorney's Office recently requested a meeting with Mr. Cohen and his Staff regarding future litigation strategy in this case. The Town Attorney's Office did in fact meet with Mr. Cohen and his Staff this week to map out future strategy in this case and will proceed accordingly.

9. **FEINGOLD V. TOWN OF DAVIE:** The Town Attorney has been advised by Mr. McDuff's office that a Complaint was filed against the Town of Davie alleging that the Plaintiff, while riding his horse, had been thrown from the horse by electrical wiring and is claiming bodily injury and has sued the Town and FPL. On August 10, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that his office had filed a Motion to Dismiss the Complaint as it pertains to the Town of Davie and said Motion is still pending. On September 8, 2004, the Town Attorney again discussed this litigation with Mr. McDuff, who indicated that several depositions have been taken of various witnesses and that Mr.

Feingold's deposition would be taken shortly. On September 28, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant in his absence, who indicated that due to the recent hurricanes, a number of the depositions that had been scheduled had been canceled and rescheduled. On November 8, 2004, the Town Attorney again spoke with Mr. McDuff, who advised that his office had taken the deposition of the Plaintiff, Mr. Feingold, and that his office was currently scheduling other depositions to be taken. He reiterated the fact that no trial date in this matter has yet been set. On December 8, 2004, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that they have recently received some of the medical records requested by Mr. McDuff's office and they are awaiting production of further documents. On January 20, 2005 the Town Attorney spoke with Mr. McDuff's legal assistant who indicated that recently the Plaintiff offered to settle this matter for \$49,999.99. In turn, Mr. McDuff's firm submitted an offer to settle the matter for the sum of \$1001.00. On February 2, 2005, the Town Attorney again spoke with Mr. McDuff's legal assistant, who indicated that their office had not received any response to their offer of settlement. On May 16, 2005, the Town Attorney's Office received an updated Status Report on this litigation indicating that approximately 10 representatives from the Town of Davie were scheduled to be deposed in the first half of June, 2005. On June 23, 2005, the Town Attorney's Office spoke with Mr. McDuff's legal assistant, who confirmed that several Town Staff personnel had been deposed in the first half of June, 2005, as scheduled. On August 24, 2005, the Town Attorney spoke with Mr. McDuff who indicated that the status of this litigation remained the same since the previous Litigation Update Report, and that discovery is ongoing. On December 20, 2005, the Town Attorney spoke with Mr. McDuff's legal assistant, who indicated that there had been no changes in the status of this litigation since the last Litigation Update Report.

10. **TOWN OF DAVIE V. CARMAX SUPERSTORES:** The Special Master ruled in favor of the Town on the trial level and the Respondent, Carmax, appealed the ruling to the Circuit Court of Broward County and filed an Initial Brief. The Town Attorney's Office in response, filed an Answer Brief to the Initial Brief and the Respondent thereafter, filed a Reply Brief. The case has now been fully briefed and the Town Attorney's Office continues to await either a decision from the Court based upon the Briefs, or an Order requiring oral argument. In the meantime, a settlement proposal was received from the attorney for the Defendant which was forwarded to the Code Enforcement Director, Daniel Stallone, for his review. The parties are currently engaged in settlement negotiations. Recently, the Town Attorney's Office appeared before Judge Fleet on March 15, 2005, along with opposing counsel to advise the court of the status of this case and of the ongoing attempt to negotiate a settlement. An Executive Session was held on May 4, 2005, with regard to the settlement proposal received from the Respondent, Carmax, and the Town Attorney's Office received direction from the Town Council regarding the settlement proposal. The Town Attorney's Office, in accordance with the direction given it by the Town Council at the Executive Session, contacted the attorney for the Respondent in writing advising him of the Council's direction in this matter. The Respondent's attorney responded in writing to the Council's proposal. An Executive Session was held on July 20, 2005, during which the Council considered the Respondent's reply and gave direction to the Town Attorney as to how to proceed. The Town Attorney's Office accordingly, wrote to the attorneys for Carmax conveying the direction given to it at the

Executive Session. Recently, the Town Attorney's Office received a reply to its letter from the attorneys for Carmax, and a proposed Stipulated Agreement was prepared and placed on the Town Council Agenda of November 3, 2005, for the Council's consideration. At the November 3, 2005 Council Meeting, the Town Council expressed concern with regard to 2 of the provisions of the proposed Stipulated Agreement and the matter has been tabled to allow the Town Attorney's Office to confer further with the attorneys for Carmax relevant to these issues. The Town Attorney's Office has conferred with the attorneys for Carmax relevant to the issues of concern to the Town Council and the Town Attorney's Office, and recently received a response in regard to some of those concerns. The attorneys for Carmax have indicated that they must confer further with their client with regard to the remaining issues.

11. **TOWN OF DAVIE V. OSVALDO CIEDI:** The Town filed a six count Code Enforcement action against the property owner alleging that he and others had violated the Davie Town Code and Charter. Specifically, the property owner was charged with violating Section 12 of the Town Charter, entitled, Franchise; Section 12-32 of the Town Code entitled Non-Permitted Use; Section 9-3 entitled Deposit of Waste Material on Private Property Prohibited; Section 12-328(B) entitled Engineering Permits; Section 12-33(U) entitled Nuisance; and Section 9-22 entitled garbage service required. After a several hour Hearing the Special Magistrate found the property owner in violation of the provisions of the Town Code and Charter mentioned above. The property owner has been ordered to come into compliance with the Town Code and Charter within 30 days from the Special Magistrate's Order. The Town Attorneys, the Town's Code Enforcement Officials, its Engineering Department and its Planning & Zoning Department met with Mr. Ciedi to inform him how he is to come into compliance with the Town Code by removing the solid waste in a safe manner. Mr. Ciedi has failed to remove the waste in compliance with the Davie Town Code and has failed to abide by the Order of the Special Magistrate and as a result, a Non-Compliance hearing is being set down so that the Special Magistrate can issue the appropriate fines. The property owner filed a Motion seeking a rehearing before the Special Magistrate and the Town Attorney Office's filed a Brief in Opposition to that Motion. Further, at a hearing held before the Special Magistrate, the Court determined that it had no jurisdiction to entertain the Motion for Rehearing as it was time barred. The parties have met with their attorneys along with Staff from the Town Engineering Department and Code Enforcement Division per the property owner's request on a number of occasions. The most recent meeting took place on September 22, 2005, with attorneys for the Town of Davie, the attorneys for the property owner, the Town's Code Enforcement Division, and the engineers representing both the Town and the property owner. It was determined that the engineers would meet sometime the following week to determine the amount of solid waste currently encumbering the property. Once that is determined, the attorney for the property owner has indicated that the solid waste will be removed in a manner required by the Town. On November 22, 2005, the Town Attorney spoke with the Town Engineer who indicated that he had met with Mr. Ciedi's engineer and had provided the property owner's engineer with certain information needed to determine the amount of waste to be removed. Since the last Litigation Update Report, Mr. Ciedi's attorney has indicated that he has withdrawn as the property owner's attorney. In the meantime, a meeting was held with the property owner and Waste Management on December 21, 2005, to discuss removal of the solid waste.

12. **MARINA SWEAT V. TOWN OF DAVIE:** The Plaintiff originally filed a Complaint alleging sexual harassment and retaliation which was dismissed by the Court. She has since filed a Second Amended Complaint for retaliation only. Our special legal counsel, Mr. Harry Boreth, filed a Motion to Dismiss the Second Amended Complaint which was scheduled for hearing on March 11, 2005. On March 24, 2005, the Town Attorney spoke with Mr. Boreth who advised the Town Attorney that Judge Damoorgian signed an Order on March 11, 2005, granting the Town's Motion to Dismiss the Plaintiff's Second Amended Complaint, and gave the Plaintiff 15 days to amend her Complaint. On April 22, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that the Plaintiff had failed to file their Third Amended Complaint within the 15 days allowed by the Court and accordingly, the Plaintiff filed a Motion seeking to be allowed to file their Third Amended Complaint after that date. Mr. Boreth indicated that he had filed a response in opposition to their Motion, and that the matter was scheduled to be heard at hearing on May 5, 2005. The Town Attorney's Office was advised by Mr. Boreth on May 6, 2005, that the Plaintiff was permitted to file its Third Amended Complaint. On July 7, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that the Plaintiff had filed its Third Amended Complaint and once again, Mr. Boreth's office had filed yet, another Motion to Dismiss. Oral argument on the Town's Motion to Dismiss was heard on July 14, 2005, and on July 20, 2005, Mr. Boreth advised the Town Attorney that the Town's Motion had been granted in part and denied in part. On August 24, 2005, the Town Attorney spoke with Mr. Boreth's partner, Mr. Lloyd Glasser who confirmed that his office has filed a timely response to the Third Amended Complaint and that his office has begun to conduct discovery in this case. On October 21, 2005, the Town Attorney spoke with Mr. Boreth's legal assistant, who indicated that discovery was ongoing and that the Plaintiff's deposition is scheduled for November 16, 2005. Further, the parties had agreed to the entry of an Order granting the Town's Motion to Compel Discovery and she expected to receive the requested discovery documents shortly. On November 4, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that due to Hurricane Wilma, there had been no change in the status of this litigation. Further, on November 16, 2005, the Town Attorney received notice from Mr. Boreth's office indicating that the deposition of Marina Sweat had been re-noticed to December 13, 2005. On November 22, 2005, the Town Attorney spoke with Mr. Boreth who indicated that the Plaintiff's deposition is still scheduled for that date. On December 9, 2005, the Town Attorney spoke with Mr. Boreth's law partner, who indicated that they had only recently received extensive discovery production which the Plaintiff was compelled to provide by Court Order. He indicated that the deposition of the Plaintiff may accordingly, be rescheduled to a later date. On December 20, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that the Plaintiff's deposition had in fact been re-noticed to January, 2006.
13. **ENZA LAGANA V. TOWN OF DAVIE.** On September 22, 2005, the Town Attorney's Office was provided with a list of lawsuits involving the Town of Davie by the Risk Management Department. Accordingly, on September 23, 2005, the Town Attorney spoke for the first time, with the special legal counsel provided by SERMA, Attorney Thomas Paradise. Mr. Paradise advised that in this case, the Plaintiff is alleging that she tripped and fell on an alleged uneven sidewalk and sustained personal injuries. On December 9, 2005,

the Town Attorney spoke with Mr. Paradise, who advised that Plaintiff's counsel recently noticed this matter for trial and it is now set to be tried during the 4 week period commencing March 16, 2006. As a result, mediation is now scheduled in this matter for January 31, 2006. A pre-mediation report will be submitted to both SERMA and the Town of Davie by Mr. Paradise in January, 2006.

14. **MATTHEW MALIN AND BRANDON RIVERA V. TOWN OF DAVIE POLICE DEPARTMENT.** The Town has been served with a Summons and Complain in which the Plaintiff alleges religious discrimination. The case has been forwarded to the Town's insurer, SERMA. The Town Attorney has spoken with Mr. Harry Boreth, who has been assigned to defend the Town and Mr. Boreth has indicated that the Town denies the allegations and is vigorously defending the lawsuit. On December 20, 2005, the Town Attorney spoke with Mr. Boreth, who indicated that an appropriate response would be filed by December 23, 2005, with the Court.